

BOBALSKIN LAW LIBRARY



3 1761 10084153 5

CASES AND MATERIALS ON REAL

ESTATE TRANSACTIONS

1976-77

Store
KF
665
A4
F6
1976

Faculty of Law
McGill University
Montreal, Quebec

W.F. Foster

CASES AND MATERIALS ON REAL

ESTATE TRANSACTIONS

1976-77

2027

Faculty of Law
McGill University
Montreal, Quebec

W.F. Foster

Store
KF
W3
P4
F6
1971

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

<https://archive.org/details/casesmaterialson00fost>

II. <u>THE CONTRACT OF SALE AND PURCHASE</u>	74	(ii) What terms must be included in the writing?	
1. Introduction	74	- <u>McKenzie v. Walsh</u> (1921), 61 S.C.R. 312	100
2. An Agreement of Purchase and Sale	74	- <u>Hawkins v. Price</u> , [1947] 1 Ch. 645	102
3. Parties to the Contract	76	- <u>Kirby & Siversky v. Cameron</u> , [1961] O.R. 757	106
4. Uncertainty in the Contract	82	- PROBLEMS	110
- <u>Martin v. Jarvis</u> (1916), 31 D.L.R. 740	82	(iii) The Statute of Frauds and oral variations	111
- <u>Thomson Groceries Ltd. v. Scott</u> , [1943] 3 D.L.R. 25	86	- <u>Goss v. Lord Nugent</u> (1883), 110 E.R. 713	112
- <u>Wilson Lumber Co. v. Simpson</u> (1910), 22 O.L.R. 452	88	- <u>Shook v. Munro & Davidson</u> , [1948] S.C.R. 539	114
- PROBLEMS	92	- <u>Ramsden v. Nunziato</u> , [1951] O.R. 346	116
5. Real Estate Contracts and the Statute of Frauds	93	- PROBLEMS	120
(i) What constitutes sufficient evidence?		(iv) Avoiding the Statute of Frauds	
- <u>Thomson v. Playfair</u> (1912) 26 O.L.R. 624	93	- <u>Degelman v. Guaranty Trust Co. of Canada</u> [1954] S.C.R. 725	121
- <u>Timmins v. Moreland Street Property Co. Ltd.</u> [1957] 3 All E.R. 265	94	- <u>Erb v. Wilson</u> (1969), 69 W.W.R. 126	125
- PROBLEMS	100	- PROBLEMS	128

6. Contracts Made on a Sunday	128	- MacIntyre, "Modern Consequences of Earlier Confusion Between a Vendor's Lien and the Interest of a Cestui Que. Trust", (1952) 30 <u>Can. B. Rev.</u> 1016	163
III. <u>THE LAND TITLES AND REGISTRY SYSTEMS</u>	133	- PROBLEM	170
1. Donahue, <u>Conveyancers Guide to Real Estate Practice in Ontario</u> , pp. 1-20 (1970)	133	3. Purchaser's Lien	170
2. L.S.U.C. Bar Admission Course Materials, <u>Differences in Terminology and Administration Between Registry Systems and Land Titles Systems</u>	142	- <u>Rose v. Watson</u> (1864), 11 E.R. 1187	170
		- <u>Whitehead & Co. Ltd. v. Watt</u> , [1902] 1 Ch. 835	173
		4. Position Under a Long Term Agreement of Purchase and Sale	176
		- <u>Re Hole</u> , [1948] 4 D.L.R. 419	176
IV. <u>POSITION OF VENDOR AND PURCHASER AFTER EXECUTION OF AGREEMENT OF PURCHASE AND SALE</u>	146	- <u>Re Registrar of Titles, Vancouver Land Registration District</u> , [1954] 2 D.L.R. 18	185
1. Nature of the Relationship		V. <u>PROBLEMS WHICH MAY ARISE BETWEEN THE SIGNING OF THE AGREEMENT AND THE CLOSING OF THE TRANSACTION</u>	
- <u>Lysaght v. Edwards</u> (1876), 2 Ch. D. 499	146	1. Payment of the Deposit	
- <u>Payner v. Preston</u> (1881), 18 Ch. D. 1	155	- Honsberger, "Deposits" in Law Society of Upper Canada Special Lectures, <u>Sale of Land</u> pp. 71-77 (1960)	188
- PROBLEMS	160	2. Conditional Contracts	
2. Unpaid Vendor's Lien	161	- <u>Chitty on Contracts</u> pp. 602-608 (23rd ed., 1968)	191
- <u>Lang v. McMillan</u> , [1948] O.W.N. 341	161	- <u>Turney & Turney v. Zhilka</u> , [1959] S.C.R. 579	193
- <u>Sakaliuk v. Corry et al.</u> , [1930] 2 D.L.R. 239	162		

- <u>Gaywood Hall Developments Ltd. v. Wilkes</u> (1972), 23 D.L.R. (3d) 505	196	- <u>In re Gloag & Millers Contract</u> (1883) 23 Ch. D. 320	218
- <u>Caney v. Leith</u> , [1937] 2 All E.R. 532	199	- <u>Rogerson v. Cash</u> , [1917] 3 W.W.R. 911	220
- PROBLEM	203	- PROBLEMS	222
3. Discovery of Mistakes		(A) Requisitions	223
(i) Mistake		- <u>Donahue, Conveyancer's Guide to Real Estate Practice in Ontario</u> pp. 120-22	
- <u>Cheshire & Fifoot, Law of Contract</u> pp. 193-195 (7th ed. 1969)	203	(B) Removal of defects	224
- PROBLEMS	204	- <u>Steele, "Procedures in Removing Objections to Title" in Law Society of Upper Canada Special Lectures, Sale of Land</u> pp. 237-259 (1960)	224
(ii) Rectification		(ii) Concerning Quality	
- <u>May v. Platt</u> , [1900] 1 Ch. 616	205	(A) Quantity	236
- <u>United States of America v. Motor Trucks Ltd.</u> , [1924] A.C. 196	208	- <u>In re Contract between Fawcett and Holmes</u> (1898), 42 Ch. D.	
- PROBLEMS	211	- PROBLEMS	238
4. The Discovery of Defects		(B) Rights of use	
(i) Concerning Title		- <u>Re Pongnatz and Zubyk et al.</u> , [1955] 1 D.L.R. 143	238
- <u>McAleer et al. v. Desjardins et al.</u> , [1948] O.R. 557	212	- <u>Re Mullin and Knowles</u> , [1966] 1 O.R. 324	240
- <u>Cato v. Thompson</u> (1882), 9 Q.B.D. 616	215		
- <u>Flight v. Booth</u> (1834), 131 E.R. 1160	216		

- <u>Innes et al. v. Van der Weerdhoff</u> (1970), 10 D.L.R. (3d) 722	241	- <u>Mulholland et al. v. Commerce General Insurance Co.</u> (1961), 26 D.L.R. (2d) 513	261
(C) Value of the property		- <u>Coleman v. Northern Assurance Co. and Snider</u> , [1950] 3 D.L.R. 556	263
- <u>Carlish v. Salt</u> , [1906] 1 Ch. 335	244		
- <u>James v. Chiaravalle</u> (1969), 8 D.L.R. (3d) 131	246	7. Taking Title	
- Local Improvements Act, R.S.O. 1970 c. 255, section 68	249	- Law Society of Upper Canada Bar Admission Course Materials, <u>Various Matters of Title</u>	265
- PROBLEM			
(D) Fitness for a particular purpose		8. Statement of Adjustments	
- <u>Shepherd v. Croft</u> , [1911] 1 Ch. 521	249	(i) For Sale of Dwelling house	269
- <u>In re Puckett and Smiths Contract</u> , [1902] 2 Ch. 258	253	(ii) For Sale of Apartment Building	270
- <u>Re Brewers and Hawkins Contract</u> (1899), 80 L.T. 127	254	VI. <u>OCCURRENCES ON COMPLETION DAY</u>	
5. Rescission		1. Tender	
- <u>Kloepfer Wholesale and Hardware & Automobile Co. v. Roy</u> [1952] 3 D.L.R. 705	256	- Currency and Exchange Fund Act, R.S.C. 1970, C-39, section 7:	271
- PROBLEMS	259	- <u>Watts v. Strezoz</u> , [1955] O.R. 615	272
6. Destruction of the Property		- <u>Shaw v. Holmes</u> , [1952] 2 D.L.R. 330	275
- <u>Rowe v. Fidelity-Phenix Fire Insurance Co. of New York</u> , [1944] O.W.N. 387	259	- <u>Genern Investments Ltd. v. Black et al.</u> , [1969] 1 O.R. 694	278
		2. Time Stipulations	
		(A) Time is not of the essence	
		- <u>Stickney v. Keekle</u> , [1915] A.C. 386	280
		- <u>Chignecto Hotel Co. Ltd. v. Hall et al.</u> , (1966), 58 D.L.R. (2d) 548	287

(B) Time is of the essence		(C) Purchaser fails to complete	325
- <u>Kilmer v. B.C. Orchard Lands Ltd.</u> , [1913] A.C. 319	292	- <u>Dobson v. Winton & Robbins Ltd.</u> (1960), 20 D.L.R. (2d) 164	325
- <u>Steedman v. Drinkle</u> , [1916] 1 A.C. 215	295	4. Doctrine of Merger	328
- <u>Brickles v. Snell</u> , [1916] 2 A.C. 599	297	- <u>Knight Sugar Co. v. Alberta Railway & Navigation Co.</u> , [1938] 1 D.L.R. 321	
(C) Making time of the essence		- <u>Radican v. Nesbitt</u> , [1924] S.C.R. 135	331
- <u>Smith v. Hamilton</u> , [1950] 2 All E.R. 928	300	- PROBLEMS	336
- <u>Iwanczuk v. Centre Square Developments Ltd.</u> , [1967] 1 O.R. 447	304	VII. OCCURRENCES AFTER COMPLETION	338
- PROBLEMS	308	1. Discovery of Defects	
3. Failure to Complete the Transaction		(i) Defects of Title	
(A) What happens to the deposit?		- <u>Ball v. Gutschenritter</u> , [1925] S.C.R. 68	338
- <u>Howe v. Smith</u> (1884), 27 Ch. 2, 89	309	- <u>Thurston v. Streilen</u> . [1951] 4 D.L.R. 724	342
- <u>Hughes v. Lukuvka</u> (1970), 14 D.L.R. (3d) 110	312	- PROBLEMS	348
- <u>Kowbell v. Murusiak</u> (1957), 7 D.L.R. (2d) 424	314	2. Defects of Quality	
(B) Vendor fails to complete		- <u>Rutherford v. Acton-Adams</u> [1915] A.C. 866	348
- <u>Bain v. Fothergill</u>	317	- <u>Graham et al v. Legault</u> [1951] 3 D.L.R. 423	350
- <u>McNaughton v. Stone</u> , [1950] 1 D.L.R. 330	322		

- <u>Waxman v. Yeandle</u> , [1953] 2 D.L.R. 475	353	(iii) Warranty	
- <u>Scott-Polson v. Hope</u> (1958), 14 D.L.R. (2d) 333	355	- <u>De Lasalle v. Guildford</u> [1961] 2 K.B. 215	390
- <u>Croft v. Prendergast</u> [1949] O.R. 282	357	- <u>A.G. for Canada v. Corrie</u> [1951] 3 W.W.R. 207	393
- Carr, "Latent Defects in New Houses: Who Pays?" [1971] U. of T. Faculty L. Rev., pp. 74-93	361	3. Vendor's Remedies on Purchaser's Default	
- Ontario Law Reform Commission, <u>Report on the Trade Sale of New Houses</u> pp. 39-41 (1968)	366	(i) Where purchaser has paid instalments	
- <u>PROBLEMS</u>	367	- <u>Stockloser v. Johnson</u> , [1954] 1 All E.R. 630	
2. Purchaser's Remedies on Vendor's Default		(ii) Foreclosure	
(i) Damages		- <u>Standard Trust Co. v. Little et al.</u> (1915), 8 W.W.R. 1112	405
- <u>Aaroe & Aaroe v. Seymour et al.</u> (1957), 7 D.L.R. (2d) 676	368	- <u>Gray v. Abbot</u> [1923] 2 W.W.R. 424	408
- <u>Walters et al. v. Capron et al. & Jackson et al.</u> (1965), 50 W.W.R. (n.s.) 444	370		
- <u>Charpentier et al. v. Slavenwhite et al.</u> (1972), 22 D.L.R. (3d) 222	371	APPENDIX I	413
(ii) Rescission		APPENDIX II	439
- <u>Kupchak et al. v. Dayson Holdings Ltd. et al.</u> (1965), 55 W.W.R. (n.s.) 65	375	APPENDIX III	443
- <u>Schonekess et ux v. Bach et al.</u> (1968), 62 W.W.R. 673	386	APPENDIX IV	449